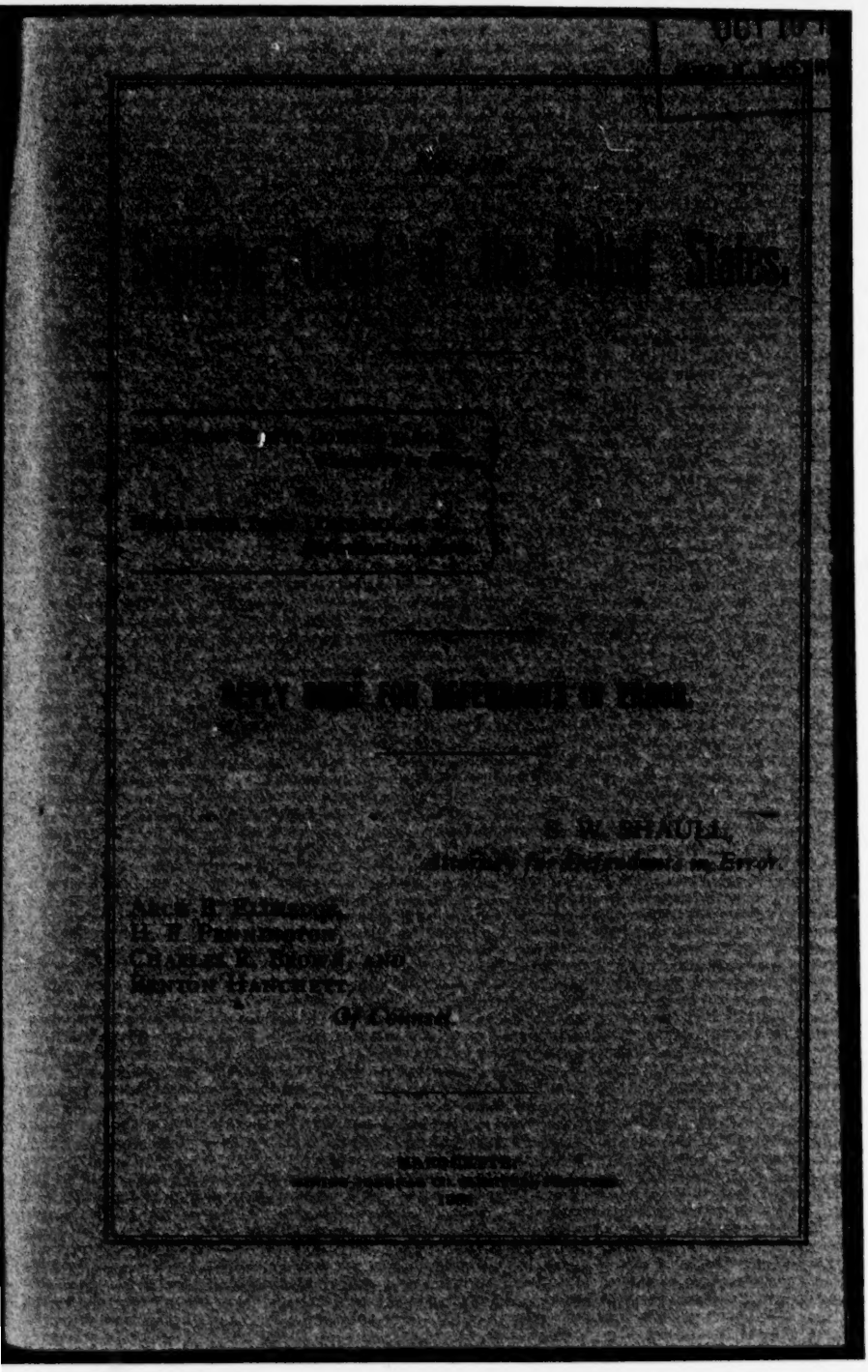

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, et al,
Plaintiffs in Error,

vs.

NEGAUNEE IRON COMPANY, et al,
Defendants in Error.

REPLY BRIEF FOR DEFENDANTS IN ERROR.

I.

The statement is made on page 4 of brief of plaintiffs in error that the federal question here involved was raised in the State courts both on behalf of William G. Mather and the Iron Cliffs Company, who were and are the owners of the stock in the Pioneer Iron Company, and this claim is afterwards several times repeated in their brief. *We assert that the federal question was raised by William G. Mather, and by him alone.*

The Cleveland-Cliffs Iron Company, the Iron Cliffs Company, and William G. Mather answered severally in a single answer. (Record, p. 40.) After the proofs had all been taken, and on the 22nd of June, 1901, before the final sub-

mission of the case (Record, p. 49), leave was asked, and obtained, to amend this answer, and it was amended, so far as the federal question is concerned, in these words (Record, pp. 51-52):

> "And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee 3,940 shares of stock of said company, and that if any decree be rendered in this case by the court in any way declaring a forfeiture or termination or expiration of said ninety-nine-year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he, as such stockholder, and said Pioneer Iron Company, would thereby be deprived of his and its property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any state to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the court in any way limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine-year lease, and as expressed therein, would be void and of no effect under said provision of said amendment to the Constitution of the United States."

It will be observed that the pretended quotation of the allegation on page 7 of plaintiffs in error's brief is a mere perversion of the record.

At page 30 of the brief of plaintiffs in error it is claimed, under the authority of Land & Water Co. vs. Ranch Co., 189 U. S., 177-180, that the federal question is sufficiently set up and claimed, if such question was fully considered in the opinion of the Court, and was ruled upon against plaintiffs in error, and it is argued that because William G. Mather, one of the plaintiffs in error, claimed a federal question because of his ownership of stock individually and as trustee, that this claim inured to the benefit of the Iron Cliffs Company, al-

though this company did not expressly, on its own behalf, make the claim.

It must be remembered that the bill of complaint (paragraph 13) avers that the corporate existence of the Pioneer Iron Company by the terms of its articles of association expired by limitation on the 2nd day of April, 1887, and the corporation became and was thereby dissolved, and that whatever rights, if any, the Pioneer Iron Company had under said lease were thereby terminated and extinguished, and such rights reverted and became vested in Charles T. Harvey and his grantees (Record, p. 7).

This allegation, as well as the allegations of paragraphs 16 and 18, to which the attention of the Court has already been called, were expressly denied by the answer of the Iron Cliffs Company (Record, para. 11, p. 41; para. 12, p. 42, and para. 14, p. 43), and, in addition, the Iron Cliffs Company, in these paragraphs, denies that the rights of the Pioneer Iron Company under the lease were terminated and reverted to Harvey, and alleges that the Pioneer Iron Company is not dissolved, and denies that it is not now in existence as alleged in paragraph 13. Neither paragraphs 7 and 16 of the bill, nor paragraphs 12 and 14 of the answer of the Iron Cliffs Company, were amended, so that, on the pleadings as they stood finally for the decision of the Court, there was a distinct averment on the part of the complainants that the charter of the Pioneer Iron Company had expired by limitation and the company had ceased to exist, and the answer of the Iron Cliffs Company made a clear and direct issue upon those facts.

Nowhere in the original or amended answer of the Iron Cliffs Company is the claim set up by that company of any rights as a stockholder of the Pioneer Iron Company.

The opinion of the Supreme Court does not state by whom the objection is made to the maintenance of the bill because the Pioneer Iron Company is not a party. The Court does not state the ground on which that objection is made, or the

reason of the objection, except as it appears in the answer of the Court made to the objection.

It must be borne in mind that various objections may and do exist to the maintenance of a suit, on the ground that some certain omitted party should be joined, and a federal question could not be raised on that ground unless the objection itself stated the federal question which was presented.

Now, in this case, the issue was distinctly made that the Pioneer Iron Company had ceased to exist, and the contention on the part of the defendants in error was that the Pioneer Iron Company was not a necessary party, and that, by necessity, the question of the existence of the corporation could only be tried *by not making it a party.*

It is this phase of the question which was considered by the State Supreme Court in the opinion upon this point.

We refer the Court to the language of the opinion hereafter quoted (Post., pp. 6 and 7), and to paragraphs 16 and 18 of the bill (Post., pp. 9, 10 and 11).

Therefore, in order that it should appear from the opinion that a federal question was raised on behalf of the Iron Cliffs Company, it was necessary that it should appear in the opinion that the objection that the Pioneer Iron Company was not made a party was put by the Iron Cliffs Company *upon the ground that it would be deprived of its property without due process of law.*

Life Ins. Co. vs. Kirchoff, 169 U. S., 103, at 109, 110, 111.
Kipley vs. Illinois, 170 U. S., 182, at 186.
Levy vs. Superior Court, 167 U. S., 175, at 177.
Oxley Stave Co. vs. Butler Co., 166 U. S., 648, at 653.
Keokuk, etc. Co. vs. Illinois, 175 U. S., 626, at 633, 634.
Mich. Sugar Co. vs. Michigan, 185 U. S., 112, at 113, 114.
Chapin vs. Fye, 179 U. S., 127, 130.

II.

It is asserted on page 11 of the brief of plaintiffs in error that in 1889, and subsequently, under authority of the Constitution and laws of Michigan, the Pioneer Iron Company took the necessary steps to, and did, duly re-organize, thereby extending its corporate existence for a second period of thirty years. It is further asserted that all this is shown by the record without contradiction; first, by the amendment to complainant's bill (Record, pp. 49-50), and, second, by certified copies of the articles of association showing such re-organization.

The record referred to shows that, at the same time that the defendant Mather amended his answer for the purpose of raising a federal question, the complainants amended their bill so as also to set up a federal question by alleging that the defendants (the plaintiffs in error) *claim and pretend* that the Pioneer Iron Company has been re-organized, that by such re-organization it has been revived, etc., and then charge that if the acts of the Michigan Legislature of 1889 and 1899 shall be held to have any such effect, they are unconstitutional under the provisions of the Fourteenth amendment to the Federal Constitution.

The position of the defendants in error upon the question of the effect of the re-organization of the Pioneer Iron Company has, from the beginning, been this and this only:

1st. That the Pioneer Iron Company's charter expired April 2, 1887; that it then died; that the Constitution of Michigan prohibited the re-organization of any corporation and so continued to prohibit until 1889.

2nd. That under the constitutional amendment allowing certain corporations to re-organize, and the act of the legislature authorizing such re-organizations, the Pioneer Iron Company was not a corporation which could re-organize, for the reason that for more than ten years next immediately pre-

ceding the passage of that act, it had not done the business for which it was incorporated.

3rd. That the attempted re-organization of the Pioneer Iron Company was void for the further reason that the requirements of the statute for re-organization had not been complied with, and, further, because such attempted re-organization was a mere fraudulent attempt on the part of the plaintiff in error, the Iron Cliffs Company, in simulated compliance with law to create a dummy corporation for its own uses and purposes and in fraud of the rights of defendants in error.

4th. That if such re-organization was effective to create a corporation, it was a new corporation, and not *the corporation* contracted with in the ninety-nine-year instrument, nor its *"corporate successor"* within the meaning of that instrument.

That these claims of the defendants in error were in issue, and some of them found in their favor by the Supreme Court, is shown by the opinion of that court (Record, p. 569):

> "Under the allegations of the bill, and *as well under the proofs*, the Pioneer Iron Company is used as a 'dummy' for the benefit of the defendant companies. The defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal. They have managed all its affairs, and for their own benefit. All its accounts, if any have been kept in the name of the Pioneer Iron Company, have been kept upon the books of the defendants. The defendants refused, upon the trial, to produce the books of the Pioneer Iron Company, or their own books showing the accounts. Some of its officers having charge of the books were produced as witnesses and testified to the above facts. Under these circumstances these defendants cannot escape the consequence of their acts done in the name of the Pioneer Iron Company for their own benefit. Admitting that the Pioneer Iron Company is not a dead corporation, yet all its property, franchise and rights are owned by the defendant companies so far as the rights under the

ninety-nine-year lease are concerned, and are fully represented by those now before the court. The theory of the complainants, as stated in their bill, is, that the Pioneer Iron Company is a dead corporation; its charter expired by limitation April 2, 1887; and that no steps were taken for some time thereafter to re-organize the corporation under the amendment to the Constitution and the law; and that that action was wholly invalid. * * * * Complainants (defendants in error) could not well *have* made the Pioneer Iron Company a party defendant without recognizing it as an existing corporation. Its existence was in issue, and, having expired by limitation of its charter, the burden of proof was upon the defendants to show a valid re-organization so as to make it the successor of the company within the terms of the ninety-nine-year lease."

Again in the opinion (Record, p. 576) the Court says:

"The charter of the Pioneer Iron Company expired by limitation April 2, 1887. The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed, either by the Constitution or by the statute, authorizing a re-organization of corporations which had expired by limitation. A constitutional amendment was adopted in 1889 authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the re-organization 'for a further period not exceeding thirty years of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital.' Pursuant to this authority, the legislature in 1889 passed an act authorizing such re-organization (2 Comp. Laws, Sec. 7035). Very important questions are raised by counsel as to the effect of this re-organization statute, the validity of the act of re-organization by the Pioneer Iron Company; as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the ninety-nine-year lease, should the re-organization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them."

As to the so-called three years statute, Section 8534, quoted by plaintiffs in error at page 8 of their brief, the position of the defendants in error was that this provision was only applicable to corporations organized for a less period than thirty years; that if it should be construed to extend the life of a corporation for thirty-three years, it would be in direct conflict with the Constitution of the State as it existed prior to 1889. It was further claimed that even if the three years statute should be construed to continue a corporation for thirty-three years, it did not help the Pioneer Iron Company, which did not attempt to re-organize *until after the expiration of a thirty-three year period.*

The statement, then, of the re-organization of this company and its status, contained in plaintiffs in error's brief, from pages 11 to 13, is entirely unauthorized by the record *Every fact as to its existence as a corporation was in dispute*

The claim found at page 12 of plaintiffs in error's brief, that the State of Michigan has never questioned the existence of the Pioneer Iron Company, is based upon the assumption that a corporation cannot expire by charter limitation, unless the State takes action to prove its death.

III.

The main proposition of plaintiffs in error's brief is, that the property of the Pioneer Iron Company is taken without due process of law, because, while it is not made a party to the litigation, its officers and agents are restrained from trespassing upon the lands of the defendants in error. This is the only basis for the claim of a federal question.

The theory of the bill of complaint is so thoroughly set forth in our brief already filed, and in the opinion of the Supreme Court of Michigan, that a further repetition of it seems unnecessary. We desire, however, to call the attention of the Court to two paragraphs in the bill which throw light upon

the prayers for relief and the decree. These paragraphs are 16 and 18, and are as follows:

> Sixteenth. Your orators show that recently and within the year last past, the said Iron Cliffs Company and said Cleveland-Cliffs Iron Company, recognizing your orator's rights in said lands free from any claims or rights under said lease of date September 17th, 1857, on the part of said Pioneer Iron Company, applied to your orators, through their president, William G. Mather, to obtain a lease of said lands or a portion thereof, under which the lessees should have the right to mine and remove the iron ore therefrom, which application your orators refused to grant; and failing to secure the right from your orators to mine the ore from said lands by means of such proposed lease, the said Iron Cliffs Company and said Cleveland-Cliffs Iron Company and their officers, directors and stockholders have fraudulently combined and planned to obtain the iron ore from said lands against the rights of your orators and without payment therefor, by the means following: They falsely and fraudulently claim and pretend, that said Pioneer Iron Company still exists and owns and holds said lease, notwithstanding said Pioneer Iron Company expired by the limitation of its term and was dissolved and ceased to exist in the year 1887 as hereinbefore stated; and they make use of the name of said Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands, and they are now actually engaged in carrying out said plan, and to that end have given notice under the name of the Pioneer Iron Company to your orators, of entry upon the following described lands under said lease, to-wit: The east half of the southwest quarter and the south half of the southeast quarter of section six, the north half of the northeast quarter of section seven, and the northwest quarter of section eight, all in town forty-seven north of range twenty-six west in said County of Marquette; and by their agents, employes and servants, have entered upon said lands against the protest of your orators and are sinking test-pits, tearing up the soil and exploring said lands for iron ore, and are preparing to mine and remove and are mining said ore

therefrom. And your orators aver that the said agents, employes and servants of said Iron Cliffs Company and of said Cleveland-Cliffs Iron Company as aforesaid, will continue to carry on the work of exploring and mining and removing the ore from said lands unless restrained therefrom by the order and decree of this Honorable Court.

Eighteenth. Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland-Cliffs Iron Company, who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators, William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland-Cliffs Iron Company, and Murray M. Duncan, who, your orators are informed and believe, and upon information and belief charge the truth to be, is the managing agent of the said Iron Cliffs Company and of the said Cleveland-Cliffs Iron Company in charge of said work upon said lands. And your orators aver the rights and privileges, if any were granted in said lease, have long since been terminated and extinguished. But the said defendants claim and pretend that under the provisions of Act 142 of the Public Acts of 1889 of the legislature of the State of Michigan, and under the provisions of Act No. 60 of the Public Acts of 1899 of the Legislature of the said State, said Pioneer Iron Company has been re-organized, and that, by reason of said acts, said re-organized company has thereby been revived, and that the right to mine ore free of royalty under said lease from said lands has thereby become revived and vested in said Pioneer Iron Company. And your orators aver and claim that if said statutes of 1889 and 1899 shall be held to apply to and to authorize the re-organization of the Pioneer Iron Company, and shall be held to re-invest said Pioneer Iron Company with said lease, and the right to mine ore from said lands under said lease, your orators would thereby be deprived of their property without the process of law, in violation of the provisions of the Fourteenth amendment of the Constitution of the United

> States, which forbids any state to deprive any person of life, liberty or property without due process of law; and your orators claim that said statutes so applied are void under said provisions of said amendment."

The substance of the prayers for relief are correctly set forth in the brief of plaintiffs in error at page 5, except that no mention is made of the usual general prayer for relief which this bill contained.

The decree of the Circuit Court for Marquette County is as follows:

> "Now, therefore, in consideration of the foregoing findings and determinations of the court concerning the particular matters set forth in the complainants' bill of complaint, it is ordered, adjudged and decreed that the defendants, their counsellors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants" (Record, p. 558).

This is the only decree which the Supreme Court affirmed (Record, p. 577).

This decree was preceded by certain findings of fact, but these findings of fact were *not affirmed by the Supreme Court of Michigan, nor was the opinion of the Circuit Judge affirmed or adopted. On the contrary, the Supreme Court gives its own reasons for its findings, finds its own facts, and expressly refused to pass upon numerous questions which the Circuit Judge did pass upon.*

The claims, therefore, of the defendants in error in their arguments in the Circuit Court or Supreme Court, or the findings of fact of the Circuit Judge, or his conclusions of law as shown by his opinion, *have no tendency whatever to estab-*

lish the existence of a federal question in this case, or to extend the operation of the decree rendered.

The statement at page 12 of their brief that there was no cessation by the Pioneer Iron Company of an active and extensive business, not only before but after the year 1889 up to the present time, is not founded on the record, and the contrary is directly found by the Supreme Court (Record, pp. 565, 569 and 575).

The decree is that the plaintiffs in error be enjoined from trespassing upon and removing ore from certain lands, and the Supreme Court simply affirmed that decree, *it did not adopt the reasons put forth by the Circuit Judge in arriving at that decree.*

Where the decree of the court below is correct the same will not be disturbed even if a wrong reason be assigned therefor. This is elementary law.

We are not dealing with the case on the judgment rendered by the Circuit Court, and have no concern with it, except as we go to it to ascertain the decree of the Supreme Court.

The Supreme Court found that under the proofs the Pioneer Iron Company is used as a *dummy for the benefit of the defendant companies*, and that all its properties, franchises and rights are owned by the defendant companies, so far as the rights under the ninety-nine-year lease are concerned, and that the acts of trespass complained of are done by the defendants in the name of the Pioneer Iron Company for their own benefit.

With these findings in view is it not clear that the decree does not restrain the Pioneer Iron Company or its agents or servants in any capacity, and *only restrains the defendant corporations and their agents and servants*, whom the Supreme Court found were in fact committing the trespasses alleged? It must be remembered that the defendant Mather was president of both the defendant companies (Record, p. 431), and that the defendant Duncan is their general manager and

agent in active charge of the work and was actually trespassing on these lands (Record, p. 568).

Clearly, the words in the decree "Whether acting in their individual or representative capacity" had reference to this situation, and in no way referred to the representatives of the Pioneer Iron Company.

The position of the defendants in error is, in brief, this:

The Supreme Court of Michigan found certain facts and gave certain reasons for its decree. With its findings of fact and its decree we are alone concerned in this court.

That the Pioneer Iron Company was dead by expiration of its charter, and these defendants were, under the shield of its name, fraudulently asserting a right to mine and were actually mining ore, royalty free, from complainants' lands, under an instrument which made that right personal to the dead corporation and unassignable.

If it is still in existence, the claim is that these defendants are wrongdoers, using that corporation as a dummy, and seeking under its name, as a cover to their fraudulent scheme, as individuals and not in any sense as stockholders, officers or agents of the Pioneer Iron Company, to mine and remove the ore. The question then presented here is this—had the Court jurisdiction from the evidence to decree that these plaintiffs in error had no right to mine on that land, the Court having found as *a fact* that in their acts of mining they *did not* act for or represent the Pioneer Iron Company?

IV.

The contention of the plaintiffs in error in this case seems to be that no instrument could be construed, no fact determined, in order to decide the controversy between the parties to this suit, without necessarily infringing the rights of the Pioneer Iron Company and taking its property.

The ninety-nine-year lease, so-called, could be construed by the Michigan Court in any proceeding where it was called in question, and that construction would be binding upon the defendants in that suit, although not binding upon the Pioneer Iron Company. The Supreme Court of Michigan did construe the ninety-nine-year instrument, and held that the rights granted by it were personal to the Pioneer Iron Company, were unassignable, and were appurtenant to a certain furnace or furnaces located at Negaunee. The Supreme Court found that these furnaces were by the plaintiffs in error destroyed (Record, p. 565), and that, nevertheless, the plaintiffs in error, using the Pioneer Iron Company's name as a mere shield, were undertaking to remove ore from the lands of the defendants in error (Record, p. 569), for use in other furnaces.

Now, when it is considered that the Supreme Court also found that the defendants were using the Pioneer Iron Company as a dummy, and were mining for their own benefit, can it be doubted that upon this construction of the instrument, and the found facts, the Court had a right to enjoin these defendants from trespassing on the complainants' lands, and can it be doubted that such a decision neither interfered with the rights nor took the property of anyone not properly before the Court?

V.

Upon the bill and answer in this case, it would have been competent for the Supreme Court of the State of Michigan to hold that the Pioneer Iron Company, whose charter rights are found to have expired April 2, 1887, had not been re-organized, or, if it had been re-organized, that it was *not the successor* of the Pioneer Iron Company mentioned in the ninety-nine-year lease, and then to have restrained these de

fendants from attempting to exercise rights which the Pioneer Iron Company itself could not exercise. If so, then the Courts of Michigan had jurisdiction of the subject matter and of the parties necessary to render a decree, and this Court is only interested in determining whether that decree invades the rights of any person not a party to the litigation.

The Supreme Court has found certain facts, and from those facts has decreed an injunction against the defendant corporations and their officers and agents.

The findings of fact bind no one who is not a party to the litigation, and the decree itself does not bind nor purport to bind any person who was not a party to the litigation, **nor does it reach any property whatever.**

The entire argument of the plaintiffs in error is based upon the proposition that no decree of any kind was possible in this case, unless the Pioneer Iron Company was made a party thereto.

The proposition (disputed in the brief of plaintiffs in error) that the legal existence of a corporation whose charter has once expired may be brought in question collaterally, is abundantly established by authority.

Morwitz, in his work on Private Corporations, Sec. 1003, says:

"If the charter of a corporation limits its existence to a definite period of time, the franchise or right to exist would expire at the time limited, and ordinarily the agreement of the shareholders would expire also. Hence, the corporation would cease to exist de facto, as well as de jure, at the time fixed by the charter, just as a limited partnership would cease to exist at the expiration of the time fixed by the articles of copartnership."

When a corporation is brought to an end by lapse of time, it would seem that any exercise of corporate powers may be questioned collaterally.

People vs. Manhattan Co., 9 Wend., 382.
Morgan vs. Williamsburg Ins. Co., 3 Ind., 285.
Willson vs. Tosson, 12 Ind., 285.

In Bradley et al vs. Reopell, 133 Mo., 545, it is held that:

> "After a corporation's period of existence has expired it ceases to be a corporation *de facto* and cannot execute a valid conveyance; and one, claiming by adverse possession and not being party or privy to such deed, may question its validity as a link in plaintiff's chain of title in an action of ejectment, by showing by the law that gave the corporation existence, that it was, at the time of making the deed, incapable of executing a valid conveyance."

In Kreitz vs. Paola Town Co., reported in 20 Kansas, at page 397, the facts showed that the defendant, Kreitz, a member of the company, sold lots after the expiration of the corporate life of the company, and, upon suit brought against him for the amount claimed to be due the corporation ($19,000.00) the defendant denied the existence of such corporation, and the court held that:

> "Although [the defendant as] a member of the company after the year 1865, might have sold the lots belonging to the company and received the proceeds thereof, and in doing so might have dealt with the company as a corporation and recognized its existence as such, still, in an action brought against him for such proceeds and brought in the name of the company as a corporation, he would not be estopped from setting up the defense that the company had, prior to that time, ceased to exist as a corporation, and therefore it no longer had capacity to sue its members as such; for there is no rule of equity or public policy authorizing an estoppel to be interposed in such case, but, on the contrary, it would be against equity and public policy."

An accounting between the members held to be the proper remedy.

In the case of Carey vs. The Cincinnati R. R. Co., 5 Iowa, 357, the Court say:

> "Where a corporation, by its own acts, has ceased

to exist, or where it has suffered acts which destroy its existence, it is as fully and entirely dissolved as if declared so by the sentence of a competent court."

"Where a company has ceased to have a corporate existence, as a legal and necessary consequence of certain acts, and a party claims that he has been injured thereby, or that certain benefits result to him in consequence of such dissolution, he may, by averring these acts, have his remedy, and need not, in the first instance, institute a proceeding and have it declared that the existence of the corporation had terminated."

The complainants charge that the Pioneer Iron Company, having had corporate life, lost it. Defendants deny that this is the legal effect of the records. The records, when appealed to, showed no articles signed or acknowledged.

What acts of complainants do the records disclose which "make it legally unjust to forbid its denial?"

Irregularities or defects *in the mode of performing the acts prescribed by law as* constituting a corporation cannot be set up by a private individual, *but he may show that those acts have not been performed at all.*

Doyle vs. Mizner, 42 Mich., 337.
Droville and V. Ry. Co. vs. Plumas Co., 37 Cal., 354.

VII.

The facts as to the ownership of the Pioneer Iron Company's stock by William G. Mather are fully discussed in our original brief on this motion, and the finding by the Supreme Court was as there stated, that the entire capital stock was owned by the Iron Cliffs Company (Record, pp. 575, 569).

CONCLUSION.

The more the decree complained of is examined, the more apparent it becomes that it does no more than enjoin certain wrong-doers who were before the Court from committing a continuing trespass. It is clear that no property was taken nor the rights of any person not before the Court interfered with by that decree. It is equally clear that the decree could not bind the property or rights of any person not present or sufficiently represented in this litigation.

Greiner vs. Klein, 28 Mich., 12, at page 18.
Smith vs. Williams, 44 Mich., 240, at pages 243 and 4.
Jenness vs. Smith, 58 Mich., 281, at page 285.

We submit that the Court had jurisdiction of the parties and of the subject matter, and that, under the findings of fact made by the Supreme Court of Michigan, it was entirely proper to restrain the plaintiffs in error from removing ore from the land in question **for their own benefit,** no matter what subterfuge they may have attempted to use in order to accomplish their illegal design.

Leigh vs. Kewanee Mfg. Co., 127 Fed. 990, at 991.
Anthony vs. Am. Glucose Co., 146 N. Y. 407 (41 N. E. Rep. 23, at 25).

The motion should be sustained with costs to defendants in error.

Respectfully submitted,

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